

When Emergency is Permanent, What Else Could be Done?

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On 14 February 2020, Egypt recorded its first confirmed COVID-19 case. In response, exceptional measures which limit people's movement, businesses activity, and minimize the state institutions' work have been taken. Most significantly, [legislative amendments](#) to the emergency law were introduced in order to accommodate the extraordinary health crisis.

Indeed, from the very outset, Egypt's attitude concerning the management of the pandemic crisis was the adoption of the minimum possible actions, which does not harm the state economic plan, nor change the way the system functions. From a formalist point of view, Egypt has existed in a [permanent state of emergency since 2017](#), and as a consequence, no specific legal response was adopted by the state which might alter the regular decision-making process or power arrangements between different branches. The desire of presenting an image to the public that the situation is under control was a crucial factor in Egypt's political, legal, and economic response to the COVID-19 crisis.

Legislative Interference: Mandatory Donations and Clinical Medical Regulation

The key actions of Egypt in response to the COVID-19 crisis were economic and financial in nature. Several [provisions](#) which were included within the new amendments of the emergency law were concerned with supporting individuals and economic sectors with financial and in-kind assistance. The question of providing the required funds for such support was at the heart of the state reaction to the crisis. Hence, a draft law aiming to deduct a fixed percentage of employees' salaries to finance the state plan and the precautionary measures to stop the spread of the virus, was submitted to the parliament. In March 2020, [the new law](#) was approved, which cut the net monthly income of all employees in public and private sectors by 1% and pensioners' net monthly income by 0.5% for one year.

Although the question of the constitutionality of these "donations" has not been examined by any court, it has been raised among politicians and [legal scholars](#). While [some views](#) argued that such a regulation could be seen in the light of sharing the burden and solidarity, other views, which I agree with, see these donations as a kind of 'taxes', as it is deducting net income by law. Whereas the Supreme Constitutional Court (SCC) has asserted on many occasions that "the mere need of the state to increase its resources by taxes, is not a conclusive factor in determining its [constitutionality](#)".

Indeed, one can see that such a move is a predictable consequence of state failure with respect to its constitutional commitment regarding the health sector. According to article (18) of the [Egyptian Constitution](#), “the state commits to allocating a percentage of government expenditure that is no less than 3% of (GDP) to health”. However, since the adoption of the constitution in 2014, this required percentage of government expenditure has never been allocated for the health sector, within any annual state budget.

One of the most considerable interferences by the Egyptian legislator during the last year was the adoption of Law no. 214/2020 which regulates clinical medical research in Egypt. After two years of controversial debates over the law, which led President El-Sisi, for the first time, to use his [presidential veto](#) to object to some of its provisions, the law was [approved](#) in December 2020. Prominently, the extensive punitive provisions which did not consider the nature of scientific research, in addition to the required bureaucratic process that needs to be fulfilled in order to conduct medical or clinical experiments, were the main reasons behind the President’s disapproval of the law in 2018. According to the 2020 law, clinical trials are the tests that are conducted on human participants, or groups of humans, in order to evaluate the effectiveness and safety of newly developed medications or medical devices. The significance of this law comes from the fact that Egypt has extensively contributed to the clinical trials related to the [Chinese COVID-19 vaccine](#). Therefore, there was a significant need to establish a legal framework that allows such medical research, and in addition, respects people’s right to life and the sanctity of the human body. Notably, the law requires several conditions and institutional permissions to allow any clinical trials conducted on Egyptians and includes prison sentences for violations of these requirements. Even though most of the Chinese vaccine trials were conducted before the adoption of the law, it is still relevant to highlight the Egyptian legislator’s reaction toward the contemporary [health care needs](#) of the society in the time of a global pandemic.

Nothing Could Drown Out the Voice of “Democracy”: Two Elections During the Pandemic

Given the weak role of upper chambers within the history of Egypt’s parliamentary life, in addition to its high financial costs, the 2014 constitutional drafters refused the bicameral model of parliament. However, [the 2019 constitutional amendments](#), introduced the Senate, the second chamber of parliament, to the Egyptian political system. Consequently, the state had a remarkable desire to fulfil its constitutional commitment and conduct the Senate elections without any delay. Despite the absence of any legislative authority of [the new Senate](#) and its merely consultive competence, the possibility of [postponing elections](#) because of the emergency health situation was never brought into the discussion. Interestingly, candidates were only able to campaign on social media and have been barred from holding any public rallies. Hence, amidst the warnings of the second wave of the COVID-19 outbreak, the elections were held in August 2020, with [a 14.23% participation rate](#). Indeed, from a legal point of view, there is no constitutional or legal text that includes any procedural deadline for holding the Senate elections. Additionally, article (2.13) of

the [newly](#) amended Emergency Law allows the President of the Republic to prohibit all public assemblies and official gatherings. Accordingly, considering these facts in conjunction with the grave health situation would be a reasonable justification for applying the force majeure principle during such an extraordinary circumstance beyond the state control, therefore, allowing the Senate elections postponement.

Furthermore, between October and December 2020, during [the peak of the second wave](#) of COVID-19 in Egypt, another election took place: the House of Representatives [elections](#). In reality, it may be concluded that neither high participation rates nor having fair and competitive representation were the goals of such elections, rather, fulfilling the formal constitutional requirements at the appointed time whatever [the cost](#). Distinct from the case of the Senate elections, article 106 of [the Egyptian constitution](#) setting a clear procedural deadline for the House elections and states that “elections for a new House are held during the 60 days preceding the end of its term”. Whereas the end of the previous House term was approaching in January 2021, there was a constitutional obligation at that time to hold the House elections at the end of 2020. Therefore, in an attempt to avoid any legal concerns with respect to the disruption of the House of Representatives functions or the legitimacy of its members’ mandate, the state has settled its decision in favour of holding the elections in its appointed time.

One might be asking about the judicial scrutiny over such decisions. In fact, holding the parliamentary elections during these exceptional circumstances was not challenged before any court. However, other cases considered the question of holding an election while the ongoing health crisis. In August 2020, the same month as the Senate elections, the Cairo Administrative Court [found](#) that holding the writers’ union’s election threatened the life of its members, thus, the election was postponed based on the [Prime Ministerial decision](#) on the suspension of all events that involve the assembly of citizens. In its reasoning, the court was concerned with the poor conditions of the precautionary measures which might surround the election procedures, considering the absence of any alternative voting methods such as electronic voting or mail-in voting.

Also, the court considered that the postponement of practising trade-union rights would not leave a significant impact on the union members since there is already an elected board running the union’s interests. Responding to the defendants’ arguments in regard to the more wide-scale election which was being run by the state at the same time, the court justified this action on the basis that the Senate election was “necessary” for the state to fulfil its constitutional commitment and for the democratic life in Egypt, and asserted that the court was applying its proportionality analysis test to balance between benefits and harms of each decision through a case by case approach. Four months later, the same court [allowed](#) the subsidiary Bar Association Boards’ elections and refused all claims concerning the health situation. Although the similarities between both cases, the court did not provide enough reasoning for its findings and briefly addressed the significance of the trade unions’ independence in managing their internal business.

In sum, Egyptian courts do not have a consistent framework concerning its proportionality analysis, which might lead to such contradictory results. Further,

considering the existing political environment in Egypt, it is unlikely for courts to annul a significant state decision such as running a parliamentary election that would cost the public treasury billions of pounds.

Development and Human Rights: Continuous Concerns and the Dilemma of Priorities

During the last year, Egypt continued with the implementation of its development plan which includes building a [new administrative capital](#), renovating the historical city of Cairo, in addition to improving basic infrastructure all over the country. However, these megaprojects involving different sectors such as energy, [transportation](#), and [housing](#), were not truly debated among representative councils or local communities. For instance, though article 101 of the Egyptian constitution entrusts the House of Representatives to approve the general policy of the state, and the general plan of economic and social development, the House has never been asked to approve the government plan to establish a new administrative capital or discuss its required funds. In the meanwhile, since [the dissolution of local councils](#) during the events of the 2011 revolution, a call for a new election was never made, in violation of the constitution. Remarkably, according to article 180 of the constitution, “local councils are responsible for developing and implementing the development plan, monitoring the activity’s different aspects”, thus, the absence of such councils played an essential role in leaving the state development plans without any oversight. The exclusivity attitude of the state regarding the determination of future plans leaves people frustrated about the next steps which might affect their daily life and activities. As mentioned, there was no intent to postpone the state economic plan, hence, several concerns were raised regarding state priorities in a time of a global health emergency. Needless to mention that during the time of a pandemic, the right to health should be considered as the top of the human rights spectrum which must be promoted and enforced. Given the fact that [human rights are interdependent, indivisible, and interrelated](#), one might conclude that the proper realization of the right to health, during a sanitary emergency, could be seen as a pre-condition for the enjoyment of other human rights.

Egypt launched its [comprehensive health care system](#) in 2020, which is expected to provide health care insurance for all Egyptians in 15 years. Moreover, the government has launched various [health initiatives](#) for the early detection and free treatment of several diseases. In fact, during the last few years, the state actions toward health issues were impressive compared to all previous attempts to upgrade the health system in Egypt. However, the state seems unwilling to consider the public health of Egyptians as a top priority with respect to the most significant challenge that facing all countries at the current time: the COVID-19 vaccine. In a television statement, health officials stated that the COVID-19 vaccine will be available for free [only to medical staff and economically vulnerable groups](#), who are registered within the database of the ministry of social security, estimated to be around 15 million people out of a total population of 100 million. Consequently, the vast majority of Egyptians will need to pay for vaccination.

During the last year, arresting and detaining political [opponents never stopped](#), and has even included [doctors](#) who criticized the state performance regarding the health crisis. Nevertheless, in response to the national and [international](#) criticism regarding the human rights situation in Egypt, the state has consistently been [calling](#) not to limit the focus on civil and political rights, but rather consider the importance of socio-economic rights as well. Therefore, such a situation could call for the evaluation of state expenditure priorities and its willingness to promote the right to health in particular and socio-economic rights in general.

Given that [the right to health contains entitlements](#) such as the right to prevention, treatment, and control of diseases, the right to free COVID vaccinations must be considered and enshrined in such health emergency time. Notably, a group of petitioners brought a [lawsuit](#) before the Cairo administrative court challenging the state policy regarding the vaccination plan, asking for free vaccination for all Egyptians. One of the arguments which been introduced to the court is that the state development plans would be pointless without protecting the “development” of people’s lives in the first place. Although the case still pending, there is a huge hope that the Court will come out with a decision obliging the state to provide such a vaccine for people with no costs. Also, it must be noted that, in March 2021, the government has slightly expanded its vaccination program, that been conducted for free for everyone who been registered in the online system. Thus, such a move could be an indicator of the state potentially retreating from its previous decision to charge for the provision of priced COVID vaccinations.

Conclusion and Recommendations

Living in a permanent state of emergency is not just a threat to the enjoyment of fundamental rights or a back door for the abuse of exceptional powers, it also could leave the entire legal system in a state of confusion when a real emergency took a place. Generally speaking, Egypt found itself in the middle of a real global health emergency, but the mentality and skills of crisis management were always being directed to other kinds of emergencies that usually related to security concerns. Historically, emergency regulations [were used](#) for the purpose of allowing the executive authorities to repress any form of opposition for almost half a century. This is “[the normal](#)” in Egypt. Therefore, when a “real emergency” took a place, Egypt was not able to develop alternative tools in order to deal with it, instead, sticking with “the normal” was the choice. Elections will be held, projects will continue, and people will pay for their vaccine (though no exact price has been published).

If one could provide some recommendations for Egypt in such a critical time, the first would be ending the continuous state of emergency that been activated since 2017. Keeping emergency regulations into force deeply eliminates any chance for the establishment of the rule of law and democracy in Egypt. The ongoing state of exception constructs a constitutional and legal foundation for unlimited presidential powers, in addition, legitimises the continuous work of [exceptional](#) courts in Egypt. Second, more meaningful engagement mechanisms that allow people to contribute to the state development plans should be provided. However, without being pessimistic, what Egypt needs now is more than a set of recommendations,

rather, Egypt needs a real political will that prioritize the importance of political diversity, human rights, that sees citizens as a partner in the decision-making process not as a potential danger threatening the stability of the state.

